

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

BONNIE KURNICK, on behalf of herself and
all others similarly situated,

Plaintiff,

v.

STARBUCKS CORPORATION, and DOES 1-
10, inclusive,

Defendants.

No. 2:11-cv-01985-MJP

JONAH CANNON, JAMES KAEN, and
RACHEL WASSEL, Individually and on
Behalf of Themselves and All Other Persons
Similarly Situated,

Plaintiffs,

v.

STARBUCKS CORPORATION,

Defendant.

No. 2:12-cv-00169-MJP

ORDER CONSOLIDATING RELATED
CASES AND APPOINTING INTERIM CO-
LEAD AND LIAISON COUNSEL

This matter comes before the Court on Plaintiffs' cross motions to appoint interim lead
counsel and to stay or consolidate related cases. (Case No. 11-1985MJP, Dkt. No. 19; Case No.
C12-169MJP, Dkt. No. 2.) Having reviewed the motions, the opposition to each motion (Dkt.

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1 Nos. 20, 24), the replies to each opposition brief (Dkt. Nos. 29, 32), Defendant Starbucks
2 Corporation's response to the motions (Dkt. No. 15), and the supplemental materials submitted
3 by counsel (Dkt. Nos. 30, 31), the Court GRANTS Plaintiffs Jonah Cannon, James Kaen, and
4 Rachel Wassel's ("Cannon Plaintiffs") motion.¹
5

6 The Court first finds that consolidation is appropriate in this case. Federal Rule 42(a)
7 states that consolidation is appropriate where actions name common defendants and involve
8 common questions of law or fact. Fed. R. Civ. P. 42(a). Here, both cases involve the same
9 defendant and center on the same commercial practice of Starbucks charging an undisclosed
10 premium on purchases of scooped coffee beans sold in less than one pound increments. (Case
11 No. C12-169MJP, Dkt. No. 1 at 2; Case No. C11-1985, Dkt. No. 1 at 3.)
12

13 The Kurnick Plaintiff urges the Court not to consolidate the related case, but instead to
14 stay the Cannon case, because "the Kurnick case is much further along than the Cannon action,
15 and the parties in Kurnick have proposed a short, early, and efficient method to determine if the
16 parties are able to resolve the underlying claims, on a nationwide basis." (Case No. C11-
17 1985MJP, Dkt. No. 19 at 4.) Having reviewed the record in both cases, the Court is not
18 persuaded that the Kurnick action, which was filed Nov. 29, 2011, is significantly further along
19 than the Cannon action, which was filed Jan. 30, 2012. Further, the Court does not agree that the
20 early settlement period proposed by the Kurnick Plaintiffs provides a sound reason to stay the
21 Cannon case. (Case No. C11-1985MJP, Dkt. No. 19 at 4.)
22

23 The Court also finds that, under the criteria set by the Federal Rules, counsel for the
24 Cannon Plaintiffs should be appointed interim lead counsel. Federal Rule 23(g)(3) permits the
25 Court to "designate interim counsel to act on behalf of a putative class before determining
26

¹ A number of duplicate motions were filed in both cases. In this paragraph, where a specific case is not identified, the docket number refers to the docket in Case No. C11-1985MJP.

1 whether to certify the action as a class action.” Fed. R. Civ. P. 23(g)(3). When multiple groups of
2 attorneys seek to act as interim counsel, the Court is to select the group best able to represent the
3 class with respect to matters through a decision on class certification, considering factors set out
4 in Fed. R. Civ. P. 23(g)(1). See In re Hannaford Bros. Co., 252 F.R.D. 66, 67-69 (D. Me. 2008).

5 The factors set forth in Fed. R. Civ. P. 23(g)(1)(A) are:

- 6
- 7 (1) The work counsel has done in identifying or investigating potential claims in the
8 action;
 - 9 (2) Counsel’s experience in handling class actions, other complex litigation, and the
10 types of claims asserted in the action;
 - 11 (3) Counsel’s knowledge of the applicable law; and
 - 12 (4) The resources that counsel will commit to representing the class.
- 13

14 Here, although the relative detail of the two complaints indicates that counsel for Cannon
15 Plaintiffs have done more work in investigating the potential claims than counsel for Kurnick
16 Plaintiffs, the Court’s decision is based primarily on the Court’s evaluation of counsel’s
17 experience in handling similar class action litigation. (Cf. Case No. C11-1985MJP, Dkt. No. 19
18 at 7-10; Case No. C12-169MJP, Dkt. No. 2 at 10-13.) In reaching its decision, the Court placed
19 particular emphasis on the references submitted by counsel. (Case No. C11-1985MJP, Dkt. Nos.
20 30, 31.) Because both cases were filed relatively recently, the Court does not give significant
21 weight to the initial disclosures and early settlement negotiations conducted between Defendant
22 and Kurnick Plaintiffs. (Case No. C11-1985MJP, Dkt. No. 19 at 6-7.)

23 Pursuant to these findings, it is hereby ORDERED:

1 be applicable to these Consolidated Actions as more fully set forth below. Separate dockets shall
2 also be maintained for each of these Consolidated Actions, and entries shall be made in
3 accordance with the regular procedures of the Clerk of the Court, except as modified by this
4 Order.

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6 **III. NEWLY-FILED OR TRANSFERRED ACTIONS**

7 6. When a case that arises out of the subject matter of this action is hereinafter filed
8 in this Court or transferred from another Court, the Clerk of this Court shall:

- 9 a. file a copy of this Order in the separate file for such action;
10 b. mail a copy of this Order to the attorneys for the plaintiff(s) in the newly
11 filed or transferred case and to any new defendant(s) in the newly filed or
12 transferred case; and
13 c. make the appropriate entry in the docket for this action.

14 7. Each new case which arises out of the subject matter of the Consolidated Actions
15 that is filed in this Court or transferred to this Court shall be consolidated with this action and
16 this Order shall apply thereto, unless a party objecting to this Order or any provision of this
17 Order shall, within ten (10) days after the date upon which a copy of this Order is served on
18 counsel for such party, file an application for relief from this Order or any provision herein and
19 this Court deems it appropriate to grant such application.
20

21 8. During the pendency of this litigation, or until further order of this Court, the
22 parties shall take reasonable steps to preserve all documents within their possession, custody or
23 control, including computer-generated and stored information and materials such as
24 computerized data and electronic mail, containing information that is relevant to or which may
25 lead to the discovery of information relevant to the subject matter of the pending litigation.
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1 **IV. APPOINTMENT OF INTERIM CO-LEAD AND LIAISON COUNSEL**

2 9. The Court hereby appointments Block & Leviton LLP and Shapiro Haber &
3 Urmy LLP as Interim Co-Lead Counsel and Byrnes Keller Cromwell LLP as Liaison Counsel.

4 10. Lead Counsel shall have the following responsibilities and duties, to be carried
5 out either personally or through counsel whom Lead Counsel shall designate:

- 6 a. to coordinate the briefing and argument of any and all motions;
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8 b. to coordinate the conduct of any and all discovery proceedings;
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10 c. to coordinate the examination of any and all witnesses in depositions;
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12 d. to coordinate the selection of counsel to act as spokesperson at all pretrial
13 conferences;
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15 e. to call meetings of the plaintiffs' counsel as they deem necessary and
16 appropriate from time to time;
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18 f. to coordinate all settlement negotiations with counsel for defendant;
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20 g. to coordinate and direct the pretrial discovery proceedings and the
21 preparation for trial and the trial of this matter and to delegate work
22 responsibilities to selected counsel as may be required;
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24 h. to coordinate the preparation and filings of all pleadings; and
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26 i. to supervise all other matters concerning the prosecution or resolution of
the Consolidated Actions.

11. No motion, discovery request or other pretrial proceedings shall be initiated or
filed by any plaintiffs without the approval of Co-Lead Counsel, so as to prevent duplicative
pleadings or discovery by plaintiffs. No settlement negotiations shall be conducted without the
approval of Co-Lead Counsel.


1 12. Co-Lead Counsel shall have the responsibility of receiving and disseminating
2 Court orders and notices.

3 13. Co-Lead Counsel shall be the contact between plaintiffs' counsel and defendant's
4 counsel, as well as the spokespersons for all plaintiffs' counsel, and shall direct and coordinate
5 the activities of plaintiffs' counsel. Co-Lead Counsel shall be the contact between the Court and
6 plaintiffs and their counsel. Co-Lead Counsel may designate other counsel, including Liaison
7 Counsel, to act of its behalf.

8 14. All counsel for plaintiffs in the Action shall submit to Co-Lead Counsel detailed
9 time reports reflecting the hours of work expended by each attorney, their billing rate and the
10 subject matter of the work. Time reports shall be submitted on a quarterly basis with the first
11 report due no later than one month following entry of this Order, and shall continue for each
12 subsequent quarter thereafter or on such schedule as Co-Lead Counsel shall determine. Any
13 failure to timely submit such reports to Co-Lead Counsel may result in the disqualification of
14 such unreported time from being reimbursed.

15 15. Defendant shall effect service of papers on plaintiffs by serving copies on Co-
16 Lead Counsel by overnight delivery service, electronic mail ("e-mail"), telecopy, hand delivery,
17 or through the Court's CM/ECF filing system. Plaintiffs shall effect service of papers on
18 defendant by serving copies on each of its counsel by overnight delivery service, e-mail,
19 telecopy, hand delivery, or through the Court's CM/ECF filing system.

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23 SO ORDERED THIS 10th day of March, 2012.

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Marsha J. Pechman
United States District Judge